

PAGE 1/60 * RCVD AT 8/9/2006 11:25:48 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-2/21 * DNIS:2738300 * CSID:2147398284 * DURATION (mm:ss):20:08

Aug. 9. 2006 10:36AM

AUG 09 2006

No. 0206 P. 2

TRANSMITTAL LETTER (General - Patent Pending)	Docket No. 79123-1131
--	---------------------------------

In Re Application Of: **Leonard R. Kilby, et al.**

Application No. 10/670,113	Filing Date 9/24/03	Examiner Sameh Tawfik	Customer No. 38406	Group Art Unit 3721	Confirmation No. 8154
--------------------------------------	-------------------------------	---------------------------------	------------------------------	-------------------------------	---------------------------------

Title: **PATTERN FORMER AND METHOD OF PATTERN FORMING FOR WRAPPED BAKERY PRODUCTS**

COMMISSIONER FOR PATENTS:

Transmitted herewith is:

**Response to Notification of Non-Compliant Appeal Brief; and
Second Amended Brief for Appellants**

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of _____ is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. **50-0856** as described below.
 - ☐ Charge the amount of _____
 - ☒ Credit any overpayment.
 - ☒ Charge any additional fee required.
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature

Dated: August 9, 2006

cc: client

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

(Date)

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

P16A/REV04

AUG 09 2006

In re Application of:

LEONARD R. KILBY, et al.

Serial No. 10/670,113

Filed: September 24, 2003

**For: Pattern Former and Method of
Pattern Forming for Wrapped
Bakery Products**

Examiner: Sameh Tawfik

Art Unit 3721

Mail Stop: APPEAL BRIEF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

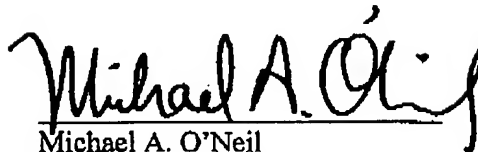
RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Applicant hereby responds to the Notification of Non-Compliant Appeal Brief dated July 19, 2006.

Responsive to paragraphs 1, 8, 9, and 10 of the Notification, applicant herewith submits a **Second Amended Brief for Appellants** wherein all non-compliant issues have been corrected.

Respectfully submitted,

MICHAEL A. O'NEIL, P.C.

A handwritten signature in black ink that reads "Michael A. O'Neil". The signature is written in a cursive style with a large, stylized "M" and "O".

Michael A. O'Neil
Registration No. 23,007

9th
Date: August 9, 2006
5949 Sherry Lane, Suite 820
Dallas, Texas 75225
(214) 739-0088 (Telephone)
(214) 739-8284 (Facsimile)

**RECEIVED
CENTRAL FAX CENTER**

AUG 09 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

LEONARD R. KILBY, et al.

Serial No. 10/670,113

Filed: September 24, 2003

**For: Pattern Former and Method of
Pattern Forming for Wrapped
Bakery Products**

Examiner: Sameh Tawfik

Art Unit 3721

.....

BEFORE THE BOARD OF
PATENT APPEALS AND
INTERFERENCES

SECOND AMENDED BRIEF FOR APPELLANTS

TABLE OF CONTENTS

The Real Party In Interest.....	1
Related Appeals And Interferences.....	1
Status Of The Claims.....	2
Status Of Amendments.....	2
Summary Of Claimed Subject Matter.....	2
Grounds of Rejection To Be Reviewed On Appeal.....	3
Argument.....	4

- I. EUVERARD DOES NOT DISCLOSE THE STEP OF ARRANGING A SUBSEQUENT GROUP OF WRAPPED BAKERY PRODUCTS ON THE GROUPING APPARATUS DURING MOVEMENT OF A PREVIOUS GROUP OF WRAPPED BAKERY PRODUCTS FROM THE GROUPING APPARATUS ONTO THE TURNTABLE UNDER THE ACTION OF THE TRANSFER APPARATUS

II. SCHNEIDER DOES NOT DISCLOSE MOVING PATTERNS OF
WRAPPED BAKERY PRODUCTS DIRECTLY FROM THE
TURNTABLE INTO BAKERY TRAYS

Conclusion.....	7
Claims Appendix.....	8
Evidence Appendix.....	10
Related Proceedings Appendix.....	54

RECEIVED
CENTRAL FAX CENTER
AUG 09 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

LEONARD R. KILBY, et al.

Serial No. 10/670,113

Filed: September 24, 2003

**For: Pattern Former and Method of
Pattern Forming for Wrapped
Bakery Products**

Examiner: Sameh Tawfik

Art Unit 3721

~~~~~

BEFORE THE BOARD OF  
PATENT APPEALS AND  
INTERFERENCES

## SECOND AMENDED BRIEF FOR APPELLANTS

TO THE HONORABLE MEMBERS OF THE BOARD  
OF PATENT APPEALS AND INTERFERENCES:

Washington, D.C. 20231

**This is an amended appeal from the Final Rejection of Claims 63 and 64.**

## THE REAL PARTY IN INTEREST

**The real party in interest is Stewart Systems, Inc.**

## RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to the Appellant, the Appellant's legal representative or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### STATUS OF THE CLAIMS

Claims 63 and 64 are pending, and the rejection of Claims 63 and 64 is being appealed.

### STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection. However, a Terminal Disclaimer is being filed concurrently herewith in response to the Examiner's nonstatutory double patenting rejection of Claims 63 and 64.

### SUMMARY OF CLAIMED SUBJECT MATTER

The Application contains two independent claims—Claim 63 and Claim 64—which are both method claims comprising methods of assembling or forming wrapped bakery products into patterns and transferring the patterns into bakery trays for transport. Specifically, Claim 63 includes the steps of providing a grouping apparatus for receiving individual wrapped bakery products and on which groups of between 1 and about 6 wrapped bakery products are arranged [Page 14, lines 14-22; Figures #1, #2]; providing a turntable onto which the wrapped bakery products are moved from the grouping apparatus via a transfer apparatus [Page 14, lines 23-26; Figures #1, #2]; and *arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group from the grouping apparatus to the turntable* [Page 15, lines 1-11].

Claim 64 includes the steps of providing a turntable on which a pattern of wrapped bakery products are formed [Page 15, lines 13-15; Figure #3]; moving the patterns of wrapped bakery products *directly* from the turntable into bakery trays under the action of a transfer apparatus [Page 15, lines 15-19; Page 21, lines 1-27; Figures #12-#63]; and *forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern into a bakery tray* [Page 15, lines 1-11].



### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner rejected both Claim 63 and 64 under 102(b), but cited a different prior art reference to support each rejection. The basis for Applicant's response to each rejection is different, i.e., each prior art reference is missing a different element of the claim for which it is the basis of the Examiner's rejection. Thus, Applicant respectfully submits that both Claim 63 and 64 cannot stand or fall together in this Appeal, but rather must be examined separately.

### ARGUMENT

1) It is submitted that the Examiner was correct in rejecting Claims 63 and 64 under the doctrine of nonstatutory double patenting, and therefore Applicant has filed a Terminal Disclaimer of Claims 63 and 64 concurrently herewith.

2) It is submitted that the Examiner improperly rejected Claims 63 and 64 on the basis of anticipation under § 102(b) because the cited prior art references (U.S. Patent No. 4,522,292, to Euverard et al. ("Euverard"), and U.S. Patent No. 5,317,859, to Schneider et al. ("Schneider")) do not disclose all of the requisite steps of Claims 63 and 64. In particular, Euverard does not disclose the step of "arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus." And Schneider does not disclose the steps of "moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus."

I. EUVERARD DOES NOT DISCLOSE THE STEP OF ARRANGING A SUBSEQUENT GROUP OF WRAPPED BAKERY PRODUCTS ON THE GROUPING APPARATUS DURING MOVEMENT OF A PREVIOUS GROUP OF WRAPPED BAKERY PRODUCTS FROM THE GROUPING APPARATUS ONTO THE TURNTABLE UNDER THE ACTION OF THE TRANSFER APPARATUS

A claim can only be anticipated by a prior art reference under 35 U.S.C. § 102(b) if the prior art reference expressly or inherently discloses each and every step of the method. See MPEP 2131.01; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Euverard simply does not disclose each and every step of the method of Claim 63.

First, it is submitted that the Examiner impermissibly focuses the rejection on the structure of Claim 63 instead of the function. It appears that the Examiner makes two arguments in Final Office Action in rejecting Claim 63. First, the Examiner states on page 3 of the Final Office Action that the infeed conveyor 21 and grouping gate 27 of Euverard disclose the grouping apparatus of Claim 63. The Examiner goes on to state that the endless conveyor belt 25 of the infeed conveyor 21 discloses the transfer apparatus of Claim 63. But the Examiner takes an inconsistent position on page 5 of the Final Office Action stating that the grouping gate 27 of Euverard alone discloses the grouping apparatus and that the infeed conveyor 21 discloses the transfer apparatus. It is respectfully submitted that neither argument supports the rejection of Claim 63, and that the rejection should therefore be reversed.

In regard to the Examiner's first argument, it is clear that the infeed conveyor 21 (with its bed 22, roller 24, and endless conveyor belt 25) cannot perform both the step of "providing a grouping apparatus for receiving individual wrapped bakery products" and the step of "providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable" as required by Claim 63. The use of the transfer apparatus of the present

invention comprises an important improvement over the disclosure of the prior art. By means of the transfer apparatus it is possible to accumulate a subsequent group of wrapped bakery products on a grouping apparatus *while the previous grouping of wrapped bakery products is being transferred into the turntable*. This is not disclosed in Euverard because there the same device, i.e., the infeed conveyor 21, is used to group bakery products and to transfer them onto the turntable. Thus, Euverard does not disclose each and every step of Claim 63 and cannot anticipate the same.

It appears that the Examiner recognizes this problem and thus makes the second argument on page 5 of the Final Office Action. However, it is respectfully submitted that the Examiner's suggestion that the grouping gate 27 of Euverard alone can be used in step of "providing a grouping apparatus for receiving individual wrapped bakery products" in Claim 63 also fails. First, Claim 63 includes the step of "arranging groups of between 1 and about 6 wrapped bakery products *on* the grouping apparatus" (emphasis added). In Euverard the wrapped bakery products are not arranged *on* the grouping gate 27, but rather are lined up on the endless conveyor belt 25 *behind* the grouping gate 27. Second, in Euverard between 1 and about 6 wrapped bakery products are not *arranged* behind the grouping gate 27, but rather the grouping gate 27 simply holds the line of bakery products on the conveyor belt 25 while the desired number of bakery products are arranged *between* the grouping gate 27 and another gate 68 on the conveyor belt 25. *See* Figure 1 of Euverard. So again, the endless conveyor belt 25 is part of the grouping apparatus of Euverard, and cannot also disclose the steps employing the transfer apparatus of Claim 63. Thus, Euverard does not disclose arranging the products on a grouping apparatus and then moving the products onto the turntable with a separate transfer apparatus, and therefore Euverard does not anticipate Claim 63.

II. SCHNEIDER DOES NOT DISCLOSE MOVING PATTERNS OF WRAPPED BAKERY PRODUCTS DIRECTLY FROM THE TURNTABLE INTO BAKERY TRAYS

In the Final Office Action the Examiner states that Schneider discloses the step of moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus, and bases this assertion on Figures 4A-4C of Schneider. However, more instructive is Figure 1 of the method disclosed by Schneider.

Claim 64 of the application requires that patterns of bakery products be moved *directly* from the turntable into bakery trays. In other words, there is no step or device between the turntable and the bakery trays in the claimed invention. Figures 2 and 3 of the Application illustrate that in this step the movement is in-line from the turntable to the bakery trays. This is an important improvement over the prior art, and simply is not disclosed in Schneider.

Figure 1 of Schneider is a top view of the Schneider device, as opposed to Figures 4A-4C relied on by the Examiner, which are side views, and shows that bakery products are moved from the turntable assembly 70 to the transfer conveyor assembly 80, then *laterally* over to the loader assembly 110 via the pusher assembly 90, and then finally into the bakery trays. In other words, there are two steps between the turntable and the bakery trays in Schneider, and the products travel laterally in Schneider wherein the products travel only longitudinally in the claimed invention. Thus, it is respectfully submitted that Schneider does not disclose the element of "moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus," and therefore does not anticipate Claim 64.

Furthermore, Schneider does not disclose the step of forming a pattern of wrapped bakery products on the turntable. Instead, the pattern is formed in Schneider on the transfer conveyor assembly 80. And even if forming the pattern on the transfer conveyor assembly is construed as

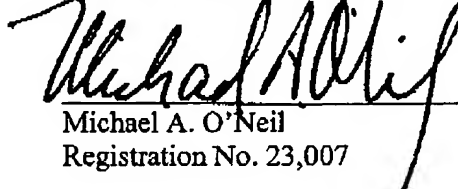
equivalent to forming the pattern on the turntable (which the Applicant expressly denies), Schneider does not disclose the step of forming a *subsequent* pattern of wrapped bakery products on the turntable during movement of a *previous* pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus. The transfer conveyor assembly cannot handle two patterns simultaneously as can the turntable in the claimed invention, and thus Schneider does not disclose this step of Claim 64 and cannot anticipate the same.

### III. CONCLUSION

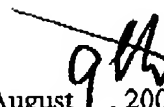
The Examiner's 102(b) rejection of the Claims 63 and 64 of the Application are fatally flawed because neither the Euvarard nor the Schneider references discloses each and every step of the methods of the rejected claims.

Respectfully submitted,

MICHAEL A. O'NEIL, P.C.



Michael A. O'Neil  
Registration No. 23,007



Date: August 9, 2006  
5949 Sherry Lane, Suite 820  
Dallas, Texas 75225  
(214) 739-0088  
(214) 739-8284 (Fax)

CLAIMS APPENDIX

63. A method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of:

providing a grouping apparatus for receiving individual wrapped bakery products;

arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus;

providing a turntable;

providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable; and

arranging a subsequent group of wrapped bakery products on the grouping apparatus during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus.

64. A method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of:

providing a turntable;

forming a pattern of wrapped bakery products on the turntable;

providing a transfer apparatus;

moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus; and

forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus.

EVIDENCE APPENDIX

U.S. Patent Number 4,522,292

U.S. Patent Number 5,317,859

MPEP 2131.01

*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 613 (Fed. Cir. 1987)



RELATED PROCEEDINGS APPENDIX

None